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Total Number of Pages in This Submission: 16

Application Number	09/721,869
Filing Date	11/24/2000
First Named Inventor	Wayne M. Kennard
Art Unit	3622
Examiner Name	Donald Champaign
Attorney Docket Number	Ken-1

ENCLOSURES *(Check all that apply)*

- ☐ Fee Transmittal Form
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- ☐ Amendment/Reply
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- ☐ Reply to Missing Parts/ Incomplete Application
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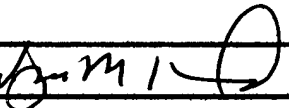
Signature			
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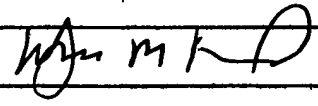
Signature			
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Wayne M. Kennard
Serial No.:	09/721,869
Filing Date:	11/24/2000
For:	SYSTEM AND METHOD FOR REDEMPTION OF AWARDS BY AWARD PROGRAM PARTICIPANTS
Examiner:	D. Champagne
Group Art Unit:	3622

REPLY BRIEF UNDER 37 C.F.R. §1.193

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SIR:

This is a Reply Brief in response to the Examiner's Answer filed April 6, 2005.

This Reply Brief is filed in triplicate.

I. Argument

Appellant has reviewed the Examiner's Answer ("Answer") and provides the following that makes plain the Examiner has not fulfilled his obligation under the Patent laws to support and sustain the obviousness rejection raised against pending claims 1-10 based on U.S. patent application No US20020065723 A1 to Anderson et al. ("Anderson"), the only prior art reference relied on by the Examiner in rejecting the claims.

At numbered section 4 of the "Claim Rejections" section of the Answer, the Examiner states the following:

> ...(7-8) determining the required amount of *AwardPoints*, which reads on a monetary amount (a *generic, convertible currency* (para. [0037]...) and redeeming the award by paying this monetary amount [0031].

The quotation above from the Answer fails to state paragraph [0037] in full. This failure is critical and causes a misinterpretation of the import of the paragraph. Paragraph [0037] in full states:

> Any AwardTrack affiliate can benefit from issuing AwardPoints of the present invention to its customers. AwardPoints are a generic, convertible currency that can either be redeemed against a wide variety of merchandise, or converted into any of several participating airline travel programs. These programs include frequent flyer programs, such as those sponsored by American Airlines, United Airlines, and Delta Airlines. These loyalty programs are not limited to airline programs, but include any loyalty programs offered by any merchants or affiliates. Further, an affiliate can create a customized co-branded point that can be redeemed only with the affiliate.

To the extent that the Examiner attempts to use the teachings of paragraph [0037] to craft a rejection, it can only be done properly if the "whole" paragraph is used to understand its teachings. Also, the surrounding paragraphs must be viewed because they may aid in the understanding a particular paragraph. It is this "whole" teaching of paragraph [0037] that the Examiner failed to use in interpreting paragraph [0037] and formulating his rejection.

As Appellant stated in the Appeal Brief at pages 6-10, the present invention determines a shortfall and then provides a number of novel ways to pay the shortfall in the context of maintaining the loyalty of system users. Contrary to the Examiner's contentions, what is taught in paragraph [0037] with regard to the phrase "AwardPoints are a generic, convertible currency" is that the AwardPoints may be used

1. to redeem merchandise, or
2. used in another loyalty program once given an equivalent value.

Noting the language of paragraph [0037] (see above), it would not be obvious to a person of ordinary skill in the art to value the shortfall and then permit the system user to purchase the shortfall miles or points. Moreover, the Examiner has not pointed to any area of Anderson, let alone paragraph [0037], that render obvious a method that includes these steps.

Claims 1-10 include steps of this kind. Specifically, the steps of claims 1-10 that paragraph [0037] does not contemplate, suggest, or in any way consider are the steps associated with determining the shortfall and then using novel methods to pay for the shortfall at that time in a manner to maintain system user loyalty. To the extent that the Examiner attempts to assert that paragraph [0037] or even Anderson in general, teaches this novel method, it is misplaced and an improper reading on the reference.

At numbered section 9 of the "Claim Rejections" section of the Answer, the Examiner relies on paragraph [0031] for allegedly teaching, suggesting, or rendering obvious paying for the shortfall with money by one on the novel methods of the present invention. Paragraph [0031] states:

> The invention allows the member to redeem points on-line, and orders are placed real-time with vendors by using the store component. Enrolled users may browse through an array of awards and electronically redeem an amount of awarded points towards an award. He member logs on to the invention and views the wallet. The member then selects the store page, step 540 of FIG. 5B. The store page shows the member what his/her point balances are for the each loyalty program, and what points can be redeemed for. Several types of award points from several loyalty programs may be combined to redeem merchandise. For example, a given piece of merchandise may require 1000 AwardPoints and 500 American Advantage miles

The key aspect of the difference in paragraph [0031] and the claims of the present invention is that at paragraph [0031] if the combination of the AwardPoints and American Advantage miles fall short, for example, of a total that required 1000 AwardPoints and 550 American Advantage miles, the system user would not be able to redeem the award until more points or mileage awards were accumulated. However, under the method of the present invention, the redemption would still be possible because the shortfall miles or points could be purchased according to one of the novel methods on the present invention.

Appellant's position with regard to paragraph [0031] is confirmed by paragraph [0032] of Anderson, where it states:

> The member then selects an item from the store that he/she wishes to purchase with the redeemable points from the loyalty program currency, step 550. ***The award store checks to make sure the member's point balance is sufficient to purchase the item with the points***. The award

> store then deducts the points required to purchase this item or service from the user's point balance to reflect the purchase. [Emphasis added.]

The highlighted portion of paragraph [0032] makes plain that the combined total of points is checked to see if there is enough for the redemption. If there are enough points, then the redemption is completed. If there are not enough points, then the redemption will not be completed. There is no provision in Anderson to complete the redemption if there are not enough points for the desired award nor has the Examiner pointed to anywhere in Anderson that would teach, suggest, or render obvious such an action. It is exactly at the point where Anderson stops that the method of the present invention is applied to complete the transaction and maintain the loyalty of the customer.

In the "Response to Argument" section of the Answer, the Examiner contends that Appellant only makes general allegations about patentability without specifically pointing out how the language of the claims is "patentably distinguishable" over Anderson. Appellant would first like to point out that his discussion about Anderson at several points in the Appeal Brief were general because Appellant has the right to point out where an Examiner has improperly interpreted a reference or has not properly cited to a reference, and the Examiner has relied on these improper actions in formulating a basis for rejection. This is what Appellant was doing in making some of the general statements about the failings of Anderson. This become of great importance when, as here, the Examiner's statements about Anderson are inapposite with its teachings. Therefore, if Anderson does not teach or suggest what the Examiner contends it does, then Anderson is being improperly applied as reference and any rejection based on Anderson should be withdrawn. Thus, Appellant requests the withdrawal of Anderson as a basis for an obviousness rejection directed to all of the pending claims, claims 1-10. This puts all of the pending claims in condition for allowance.

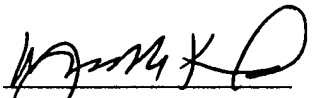
The Examiner also stated that Appellant has not demonstrated how the claims are distinguishable from Anderson. Appellant believed that this was done in the Appeal Brief, but to clear up any confusion, Anderson does not at least anticipate or render obvious step (f) of claim 1 or step (f) of claim 6. Dependent claims 2-5 that depend from claim 1 and dependent claims 7-10 that depend from claim 6 also do not have these claim element. The basis for Appellant's assertion in this regard has been set forth in the Appeal Brief filed February 16, 2005 and again in this Reply.

II. Conclusion

In the foregoing, Appellant has addressed the Examiner's contentions in the Answer. Appellant ha clearly traversed the Examiner's basis for rejecting claims 1-10 under 35 U.S.C. § 103(a) for obvious in light of Anderson. Accordingly, Appellant respectfully requests the Board reverse the outstanding obviousness rejection and remand the application to the Examiner and direct that the application be sent to issue.

Date: June 1, 2005

Respectfully submitted,



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